In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 311

PERMA-HOME CORPORATION AND VICTOR LEAVITT, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

QUESTION PRESENTED

Whether the evidence was sufficient to support the convictions.

STATEMENT

Petitioners, together with Parker and Conboy, were charged in an indictment returned in the United States District Court for the District of Massachusetts with knowingly submitting a false F.H.A. loan application to the National Shawmut Bank of Boston for the purpose of obtaining an F.H.A. loan (R. 2–3). The jury acquitted Conboy, but found the other three defendants guilty (R. 197). On October 24, 1966, peti-

271-405—67

tioner Perma-Home was ordered to pay a $5,000 fine, and Leavitt was sentenced to imprisonment for three years and given a fine of $5,000 (R. 199–201).[1] The convictions were affirmed on appeal (R. 203–204, 216).

Perma-Home is a company engaged in selling home improvements, and Leavitt, its president, was actively engaged in its daily operations (R. 4, 57, 62). The transaction charged in the indictment relates to a contract of June 29, 1963, for home improvements negotiated with Conboy by Parker, a salesman for Perma-Home. The contract was purchased by the Shawmut bank and submitted to F.H.A.

The government's evidence[2] showed that in May 1963 Parker had sold Conboy on a credit basis certain improvements on the latter's home, obtaining credit information that he wrote down on a yellow form (G. Ex. 11; R. 53) which listed an indebtedness to the Keene Finance Co. (see Pet. App. 14, n. 4). In accordance with the usual practice, that credit information was recorded at the Perma-Home office and a folder was made up for the job (R. 53–54). The office manager of Perma-Home called in the information on the contract and credit of the home owner to Securities Acceptance Corporation (S.A.C.) (R. 52), which agreed to purchase the loan. After the job was completed, on June 12, 1963, the loan documents—including a note signed by the Conboys and endorsed by

[1] Parker was sentenced to imprisonment for 30 days (R. 201–202). He has not filed a petition for a writ of certiorari.

[2] The court of appeals, in reviewing the district court's denial of a motion for acquittal, considered only the government's evidence.

petitioner Leavitt for Perma-Home, papers enabling S.A.C. to get a mortgage to secure the loan, and a completion certificate signed by the Conboys and Leavitt for the corporation—were forwarded to S.A.C. (Ex. 5 A–C; R. 16, 18, 19). S.A.C. bought the loan for $1,800 (R. 16). On June 12, 1963, Leavitt signed a Perma-Home check for $800 payable to the Conboys (G. Ex. 16; R. 61). This was used by the Conboys to pay off the loan to Keene Finance Co. listed on the credit application (R. 72–73).

On June 29, 1963, Parker sold the Conboys further improvements for which they executed a contract to pay $1,450 (Ex. 1; R. 54–56). No credit information sheet was filled out this time; Perma-Home, when the contract was called in, was directed to get the credit information from the prior deal (R. 50, 52). It was in connection with this transaction that the Conboys (at a time not specified in the evidence) signed the Federal Housing Credit Application which is the subject of the indictment (Govt. Ex. 4; R. 23).

On July 1, someone in the Perma-Home office telephoned a loan application for the June 29 contract to Shawmut (R. 52, 77). On Shawmut's investigation work sheet, which contained information given to Shawmut over the telephone, the following items were listed under the heading for "all open or recently paid instalment, trade or business accounts": (1) Coastal Acceptance, (2) G.M.A.C., and (3) Safford Gas Company. The recently paid up $800 Keene Finance obligation was not included as a reference (R. 26). Nor was the S.A.C. loan mentioned (R. 26), although the bank later became aware of that transaction (R. 28).

On July 3, 1963, Shawmut approved the loan (R. 54, 77). On August 6, Perma-Home forwarded to Shawmut the FH–1 credit application signed by the Conboys and Parker (Govt. Ex. 4), a Perma-Home contract signed by the Conboys and Parker (Govt. Ex. 1), a promissory note signed by the Conboys and endorsed by Leavitt on behalf of Perma-Home (Govt. Ex. 3) and a completion certificate signed by Conboy and Leavitt on behalf of Perma-Home (Govt. Ex. 2; R. 11, 54–57, 76–77). The FH–1 credit application did not mention the prior S.A.C. transaction and no debts were listed. Under the heading stating "List all obligations," the words "No mortgage" appeared (R. 23).

The office manager of Perma-Home testified that it was the usual practice to have all the loan papers prepared for submission to the bank at the same time and that this practice had been followed in regard to the June 29 transaction (R. 54–55, 57). He also testified that it was the usual practice for Leavitt to have before him in a Perma-Home folder all the documents relating to a loan when he signed the completion certificate and endorsed the note (R. 63–64).

ARGUMENT

The sufficiency of the evidence presents no question warranting review by this Court. The jury was justified in concluding that Leavitt, the president of this small corporation, who actively supervised its operations, knew of the falsity of the Conboy credit application.

There was direct testimony by the Perma-Home office manager that it was the usual practice for Leav-

itt to have all the documents for a loan before him when he signed the completion certificate and endorsed the note to be forwarded to the lending institution; and Leavitt was shown to have signed the completion certificate and the note relating to the Shawmut transaction. Therefore, the jury was entitled to infer that he knew the contents of the credit application also.

It was also entitled to infer that he knew the credit application was false. The evidence showed not only that Leavitt had signed the note and completion certificate with respect to the S.A.C. transaction but also that on June 12, 1963, he had signed the $800 rebate check payable to the Conboys at a time when he had all of the pertinent loan papers before him. In addition, the fact that when the credit information was telephoned to Shawmut reference was made to some matters listed on the credit information sheet of the S.A.C. loan, but not to the recently paid off Keene note, indicates that the omission of this information was deliberate, not inadvertent, and the jury could infer that this kind of deliberate suppression would be known to the active head of the company.

In its totality, therefore, the evidence supports the jury's verdict that petitioner Leavitt was aware of and participated in the submission of false information for an F.H.A. loan.[3] Since Leavitt was properly

[3] Contrary to petitioner's contention, there "is no such orthodox rule [against an inference upon an inference]; nor can [there] be." 1 Wigmore, Evidence (3d ed.), § 41. See, also, *Dirring* v. *United States*, 328 F. 2d 512, 515 (C.A. 1), certiorari denied, 377 U.S. 1003; *Ross* v. *United States*, 103 F. 2d 600, 606 (C.A. 9). Rather, the question in every case is whether the totality of circumstances justifies the finding of guilt beyond a reasonable doubt.

found guilty there can be no serious question as to the liability of the corporation of which he was the president and active operating head.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.
FRED M. VINSON, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

JULY 1967.

U.S. GOVERNMENT PRINTING OFFICE: 1967